

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

BELLWOOD CORP., et al.,

Plaintiffs,

v.

Civil Action No. 5:21-cv-00320
Honorable Frank W. Volk, Judge

CARTER BANK & TRUST, et al.,

Defendants.

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR
BIFURCATED RULE 12 BRIEFING**

The Defendants seek bifurcated Rule 12 briefing to separate the procedural issues of jurisdiction and venue under Rule 12(b)(2) and (3) from the more substantive reasons for dismissal under Rule 12(b)(6). The procedural matters are threshold, higher-order questions, and the substantive issues need only be reached by a court with proper jurisdiction and venue. That is, as the Defendants will demonstrate, the United States District Court for the Western District of Virginia, pursuant to the Plaintiffs' own numerous forum-selection clauses. As stated in their Response, the Plaintiffs do not oppose the bifurcation of the Rule 12(b) briefing." ECF No. 42 at 2. Instead, they seek an "extension of approximately 30 days" to respond — on top of the 14 days already provided by the Local Rules. *Id.* This is the same 45-day deadline on which the Plaintiffs insisted in discussions with the undersigned, which is over three times the length of the usual response time. As stated in Defendants' original Motion, such needless extensions unfairly benefit debtors in default, like the Plaintiffs.

Accordingly, the Defendants renew their request for bifurcated Rule 12 briefing, such that the need to file 12(b)(6) motions is stayed during the pendency of the Defendants' forthcoming 12(b)(2) and (3) motions. For the reasons set forth here and in Defendants' initial motion—and in

light of Plaintiffs' lack of objections — the Defendants respectfully submit that such briefing will aid the Court's consideration of these issues and be an efficient means of proceeding with this matter.

Respectfully submitted,

CARTER BANK & TRUST, et al.,

By counsel,

/s/ R. Booth Goodwin II

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CERTIFICATE OF SERVICE

I, Carrie Goodwin Fenwick, hereby certify that I served a true and correct copy of the foregoing **Defendants' Reply in Support of their Motion for Bifurcated Rule 12 Briefing** upon the following counsel of record on July 2, 2021, via the Court's CM/ECF system.

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